

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
November 9, 2005

ITEM: 11

SUBJECT: Section 401 Water Quality Certification: KB Home, San Marcos Highlands Residential Project, County of San Diego. The Regional Board will consider issuance of a technically conditioned 401 certification for impacts from the discharge of fill material to Agua Hedionda Creek. (*Christopher Means*).

PURPOSE: The Regional Board will consider the issuance of a technically conditioned Section 401 certification for impacts to Waters of the U.S. from the discharge of fill material to Agua Hedionda Creek.

PUBLIC NOTICE: Notification that the Regional Board had received an application for Section 401 Water Quality Certification for the proposed project was posted on our website the week of January 6, 2003. Interested parties were notified that the item would be brought before the Regional Board via email on October 20, 2005. The Agenda notice for the November 9, 2005, Regional Board meeting also serves as the public notice for this item.

DISCUSSION: The Regional Board received an application for Section 401 Water Quality Certification on December 23, 2002 for the discharge of fill into waters of the U.S./State in association with the San Marcos Highlands Residential Project.

This project is located on 204 acres partly within the City of San Marcos and partly in unincorporated northwestern San Diego County. The site is bisected by Agua Hedionda Creek with its headwaters consisting of the main stem of the creek, a number of ephemeral drainages and one intermittent tributary drainage. The project consists of the subdivision of 80-acres into 191 single-family lots, the extension of Los Posas Road, and a 1-acre active use park. Approximately 124.5 acres will be left as open space.

Section 401 of the Clean Water Act requires that any person applying for a federal permit which may result in the discharge of pollutants into waters of the U.S., must obtain a state water quality certification that the activity complies with all applicable water quality standards, limitations, and restrictions. Through the Section 401 Water Quality

Certification process the Regional Board certifies that the discharge is in compliance with State water quality standards. These consist of (1) designated Beneficial Uses, (2) Water Quality Objectives, and (3) the State's Antidegradation Policy. In reviewing an application for certification, the Regional Board looks at the entire project, ensuring that water quality will be protected throughout the construction and post-construction phase of the project. The Regional Board also ensures that all unavoidable impacts to waters of the U.S. are mitigated appropriately.

Construction of project as proposed will result in unavoidable impacts to 5,588 linear feet comprised of four ephemeral drainages, and 24 linear feet of Agua Hedionda Creek, totaling approximately 0.74 acres of jurisdictional waters of the U.S. (of which 0.05 acres are delineated as wetland). Temporary impacts from construction would include an additional 0.06-acre of impact to jurisdictional waters of the U.S.

The unavoidable permanent impacts to waters of the U.S. will be mitigated at a ratio of 3.3:1. Mitigation will be accomplished by the onsite restoration of 2.4 acres of the main-stem of Agua Hedionda Creek. The historic onsite pond will be removed and restored to a functioning streambed restoring the natural hydrologic regime to the creek. The onsite creation of 0.05 acre of wetlands will ensure a "no net loss" of wetlands from the project. All mitigation areas will be protected in perpetuity by the recordation of a conservation easement. An additional 2.3 acres of the creek (referred to as the "panhandle") had been originally proposed for mitigation purposes, but it was determined that existing utility easements precluded the area being placed under a conservation easement. KB Home has agreed to conduct the enhancement work in the riparian area along this portion of the creek as originally proposed, but will not receive credit for mitigation.

The tentative certification requires water quality monitoring throughout the course of the project. During the construction phase of the project, the tentative certification requires KB Home to submit quarterly construction monitoring reports, and requires the development and implementation of a sediment/siltation monitoring program. In post-construction, the certification requires KB Home to develop an implement a five-year receiving water quality monitoring program to assess changes water quality as a result of project implementation. The receiving water quality monitoring will occur concurrently with habitat/mitigation monitoring program.

To ensure long-term protection of water quality, the project will incorporate post construction structural treatment Best Management

Practices including a vegetated extended detention basin, which will treat the 85th percentile 24-hour rainfall event, and inlet filters at every catch basin onsite. The proposed stormwater management plan is consistent with the San Diego Municipal Stormwater Permit new development requirements.

During the public forum segment of the October 13, 2004 Regional Board meeting, Ms. Sandra Farrell, with the group "Friends of Hedionda Creek" raised a number of concerns about the proposed project. In response to these concerns the Regional Board stated that if Ms. Farrell was not satisfied with the tentative certification it would be brought to the Board for a hearing. On April 4, 2005, interested parties were provided a draft 401 certification and provided 21 days to comment on the draft certification. Two comments letters were received from opponents of the project. Since that time the Regional Board has attempted to keep interested community members up to date on the status of the lengthy negotiations with the project proponent through meetings, email correspondence and phone calls. Written responses to the comments will be provided in the supplemental mailing prior to the Board hearing.

Attached is the tentative Section 401 Water Quality Certification, which ensures the long-term protection of water quality from impacts associated with the San Marcos Highlands project.

KEY ISSUE: Approval of this tentative Water Quality Certification and Waiver of Waste Discharge Requirements will mitigate for anticipated impacts to water quality and beneficial uses caused by the San Marcos highlands project. The proposed mitigation is reasonable, and in line with other similar certifications issued in the Agua Hedionda Creek Watershed.

LEGAL CONCERNS: NONE

**SUPPORTING
DOCUMENTS:**

1. Tentative Resolution No. R9-2005-0272
2. Tentative 401 Water Quality Certification (File No. 02C-144)
3. Project location Map
4. October 20, 2005 Updated Project Description and associated exhibits (prepared by PCR).
5. Comment letter on draft certification from Friends Hedionda Creek.
6. Comment letter on draft certification from Neighbors of San Marcos Highlands and the Endangered Habitats League.

RECOMMENDATION: Adoption of tentative Resolution No. R9-2005-0272, which would result in the issuance of a technically conditioned 401 certification for the San Marcos Highlands Project is recommended.